

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ DEC 02 2011 ★

BROOKLYN OFFICE

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DESMOND ALEXANDER, NOEL RODRIGUEZ, and
JUAN DONATE, Each Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

Docket # 11 CV 3526

- against -

(JBW)
(VVP)

BOSCAINO AUTO COLLISION, LTD., SPEEDWAY
AUTO CENTER, and FRANK SPALLONE,

Defendants.

-----X

JACK B. WEINSTEIN, United States District Court Judge:

Plaintiffs, DESMOND ALEXANDER, NOEL RODRIGUEZ, and JUAN DONATE (hereafter "Plaintiffs"), move for Conditional COLLECTIVE ACTION CERTIFICATION pursuant to Fair Labor Standards Act of 1938, as amended, (hereafter "FLSA") 29 U.S.C. § 201, § 216(b); an Order accepting the attached Notice of Pendency with Opt-in Form; an Order Directing Conspicuous posting at Defendant companies, Boscaino Auto Collision, Ltd. and Speedway Auto Center; and an Order directing Boscaino Auto Collision, Ltd., Speedway Auto Center and Frank Spallone (hereafter "Defendants") to send by facsimile, names and addresses as more specifically set forth below to Plaintiffs' counsel, Barbara B. Kalish, The Scher Law Firm, LLP, to facsimile no. 516-747-9100.

For reasons stated on the record, Plaintiffs motion is granted as follows:

- (1) The Court hereby certifies that the Plaintiffs may proceed with their FLSA claim as a collective action pursuant to 29 U.S.C. § 216 (b);
- (2) The attached Notice of Pendency with Opt-in Form, submitted by Plaintiffs, is appropriate and may be utilized;

(3) Within thirty (30) days, Defendants shall send to Plaintiffs' counsel at the facsimile number above, last known names and addresses of tow truck drivers who worked for defendants from July 22, 2008 to date;

(4) Defendants shall post conspicuously two (2) copies of the attached Notice of Pendency with Opt-in Form for sixty (60) days from the date of this Order with the date on page 5 reflecting sixty (60) days from the date of this Order as well. Said copy with appropriate date will be supplied by Plaintiffs' counsel, Barbara B. Kalish, The Scher Law Firm, LLP, to Defendants' counsel, Daniel Kogan forthwith; and

(5) Defendants' counsel shall notify and certify to Plaintiffs' counsel that:

- a. The Notice and Opt-in form have been posted;
- b. The exact location of the two (2) posted notices; and
- c. Defendants are not interfering with or retaliating against tow truck drivers who may read said notice and opt-in.

SO ORDERED.

Dated: ~~November~~ ^{December} 1, 2011
Brooklyn, New York

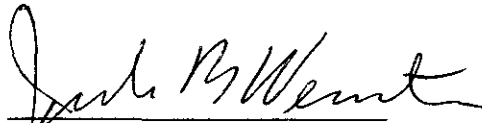

JACK B. WEINSTEIN
Sr. United States District Court Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DESMOND ALEXANDER, NOEL RODRIGUEZ, and
JUAN DONATE, Each Individually and On Behalf of All
Others Similarly Situated,

Docket # 11 CV 3526

Plaintiffs,

(Weinstein J.)
(Pohorelsky, M.J.)

-against-

BOSCAINO AUTO COLLISION, LTD., SPEEDWAY
AUTO CENTER, and FRANK SPALLONE,

Defendants.

-----X
FROM: The Scher Law Firm, LLP

TO: Persons employed as tow truck drivers by Boscaino Auto Collision Ltd., and/or Speedway Auto Center and/or Frank Spallone during the time period dating back six years from [the date of the Notice]

REGARDING: Fair Labor Standards Act Lawsuit filed against:

**Boscaino Auto Collision Ltd.
Speedway Auto Center
Frank Spallone**

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

The purpose of this Notice is to inform you of the existence of a lawsuit in which you may be "similarly situated" to the named Plaintiffs, to advise you of rights you may have with respect to this lawsuit and of certain procedures should you want to participate.

1. INTRODUCTION TO THE CASE

The lawsuit at issue was filed on July 22, 2011, and amended on August 25, 2011, and on October 13, 2011 against the Defendants Boscaino Auto Collision Ltd, Speedway Auto Center, and Frank Spallone in the United States District Court for the Eastern District of New York. The Plaintiffs allege that the Defendants violated the Federal Fair Labor Standards Act by not paying eligible employees time and one-half of their regular hourly rates for the time they worked in excess of 40 hours in a

workweek. The lawsuit is seeking back pay, at the overtime rate, for the hours claimed due and an equal amount in liquidated damages from the Defendants to compensate such eligible employees, as well as costs and attorneys' fees. The Defendants deny the Plaintiffs' allegations, and deny that they are liable to the Plaintiffs for any of the back pay, damages, costs or attorneys fees being sought.

THE COURT HAS TAKEN NO POSITION ABOUT THE MERITS OF PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES.

2. COMPOSITION OF THE CLASS

The named Plaintiffs are suing for themselves and seek to sue on behalf of other employees with whom they believe they are similarly situated. Specifically, the Plaintiffs seek to sue on behalf of persons employed as tow truck drivers by Boscaino Auto Collision, Ltd., Speedway Auto Center, and/or Frank Spallone during the time period dating back three years from [the date of the Notice] and did not receive overtime pay for those hours they actually worked in excess of 40 hours in a workweek.

3. YOUR RIGHT TO PARTICIPATE IN THIS SUIT

If you fit the definition above, you may join this lawsuit (that is, you may "opt-in") by completing and mailing the attached "Consent to Become Party Plaintiff" form to the Plaintiffs' attorneys at the following address:

The Scher Law Firm
One Old Country Road
Suite 385
Carle Place, New York 11514
Attn.: Barbara B. Kalish, Esq.
(516) 746-5040

The form must be sent to the Plaintiffs' attorneys in sufficient time to have Plaintiffs' attorneys file it with the federal court on or before (sixty days from Order Granting Motion). If you fail to return the Consent to Become Party Plaintiff form to the Plaintiffs' attorneys in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit.

YOU HAVE A RIGHT TO PARTICIPATE IN THIS LAWSUIT EVEN IF YOU ARE AN UNDOCUMENTED IMMIGRANT

4. EFFECT OF JOINING THIS CASE.

If you choose to join this case, you may be asked to give testimony and information about your work for Defendants. You will be bound by the Judgment, whether it is favorable or unfavorable.

The attorneys for the proposed class of Plaintiffs are being paid on a contingency fee basis, which means that if there is no recovery there will be no attorneys' fee. If there is a recovery, the attorneys for the proposed class will receive a part of any settlement obtained or money judgment entered in favor of all members of the class. If you sign and return the Consent to Become Party Plaintiff form attached to this Notice, you are agreeing to designate the Plaintiffs' attorneys as your agents to make decisions on your behalf concerning the lawsuit, the method and manner of conducting this lawsuit, the entering of any settlement agreement and/or agreements concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. If you join this lawsuit, these decisions and agreements made and entered into by the Plaintiffs' attorneys will be binding on you. However, the Court will determine the reasonableness of any contingency agreement entered into by the Plaintiffs with their attorneys, and determine the adequacy of the Plaintiffs' attorneys. You have a right not to be represented by Plaintiffs' counsel. You may hire another attorney to represent you.

In order to be eligible for any recovery, you will be required to present evidence to support your claim against Defendants. Therefore, you should keep any documents you acquired while employed with Defendants Boscaino Auto Collision, Ltd., Speedway Auto Center, and/or Frank Spallone, such as, pay stubs, earnings statements, IRS W-2 Forms or 1099 Forms, calendars, work diaries, appointment books, expense reports, mileage logs, driver logs, identification cards, and/or business cards. If your claim is to be processed, you may be asked to produce such documents to show how they support your claims and to verify their authenticity.

5. TO STAY OUT OF THE LAWSUIT

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the case in any way and will not be bound by or affected by the result (whether favorable or unfavorable).

6. NO RETALIATION PERMITTED

Federal law prohibits the Defendants Boscaino Auto Collision, Ltd., Speedway Auto Center, and/or Frank Spallone from discharging or in any other manner discriminating against you because you "opt-in" to this lawsuit.

7. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this lawsuit and agree to be represented by the named Plaintiffs through their attorneys, your attorneys in this lawsuit will be:

The Scher Law Firm, LLP
One Old Country Road
Suite 385
Carle Place, New York 11514
Attn.: Barbara B. Kalish, Esq.
(516) 746-5040

8. ATTORNEYS FOR DEFENDANTS BOSCAINO AUTO COLLISION, LTD., SPEEDWAY AUTO CENTER, AND FRANK SPALLONE

The attorney for the Defendants Boscaino Auto Collision, Ltd., Speedway Auto Center, and Frank Spallone is Daniel Kogan, Attorney at Law, 94-09 101 Avenue, Ozone Park, New York, 11416,

9. FURTHER INFORMATION

Further information about this Notice, the deadline for filing the Consent to Become Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by contacting the Plaintiffs' attorneys in paragraph 7.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, THE HONORABLE JACK B. WEINSTEIN, UNITED STATES DISTRICT COURT JUDGE. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANTS' DEFENSES.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DESMOND ALEXANDER, NOEL RODRIGUEZ, and
JUAN DONATE, Each Individually and On Behalf of All
Others Similarly Situated,

Docket # 11 CV 3526

Plaintiffs,

(Weinstein, J.)
(Pohorelsky, M.J.)

-against-

BOSCAINO AUTO COLLISION, LTD., SPEEDWAY
AUTO CENTER, and FRANK SPALLONE,

Defendants.

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CONSENT TO BECOME A PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of the above-styled Fair Labor Standards Act action in my name and on my behalf by the above representative Plaintiffs and so designate the named Plaintiffs' attorneys as my agent to represent me in this lawsuit regarding the method and manner of conducting this lawsuit, the entering of any settlement agreement and/or agreements concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

Signature (sign your name)

Telephone Number

(Print your name)

(Street Address)

(City, State, Zip Code)

PLEASE RETURN THIS FORM IN TIME FOR FILING WITH THE COURT BY
(sixty days from Order), to:

The Scher Law Firm, LLP
One Old Country Road
Suite 385
Carle Place, New York 11514
Attn.: Barbara B. Kalish, Esq.
(516) 746-5040

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